

FILED

MAR 19 2015

IN THE SUPREME COURT OF MISSISSIPPI

OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

**WILLIAM L. PAINTER
JOHN A. CHALK, JR.**

APPELLANTS

VS.

CASE NO: 2014-CA-00883

**REGIONS INSURANCE, INC.
D/B/A REGIONS INSURANCE OF MISSISSIPPI**

APPELLEE

MOTION FOR ATTORNEYS' FEES

ORIGINAL

Pursuant to Mississippi Rule of Appellate Procedure 27(a), Appellee Regions Insurance, Inc., d/b/a Regions Insurance of Mississippi ("Regions") respectfully moves for its reasonable attorneys' fees and costs incurred in this appeal. In support of this Motion, Regions states:

1. Regions filed suit in the Circuit Court of Madison County, Mississippi ("the Circuit Court") on July 18, 2013 against William L. Painter ("Painter"), John A. Chalk, Jr. ("Chalk"), Angie M. Strickland ("Strickland"), and Jamie L. White ("White") for breach of their employment agreements with Regions, among other claims. C.P. 1:16-94.

2. After enjoining Painter, Chalk, Strickland, and White from continuing to breach their employment agreements, the Circuit Court compelled Regions' claims against Painter and Chalk to arbitration pursuant to the arbitration provision contained in their employment agreements and stayed Regions' claims against Strickland and White pending the arbitration. C.P. 4:490-98.

3. Following extensive discovery, including the production and review of many thousands of pages of documents and numerous depositions, and a four-day arbitration, the arbitrator found in favor of Regions on its claims against Painter and Chalk and awarded Regions compensatory and punitive damages. R.E. 53-81; C.P. 6:827-55. The arbitrator also awarded

Regions \$427,276.40 for Regions' attorneys' fees and expenses incurred through the arbitration pursuant to the attorneys' fees provision contained in Painter's and Chalk's employment agreements with Regions. *Id.*

4. Regions moved the Circuit Court to confirm the arbitrator's award, and Painter and Chalk moved to vacate it. After considering numerous motions and responses to motions from the parties, the Circuit Court confirmed the arbitrator's award and entered judgment consistent with its terms. R.E. 16-19; C.P. 8:1097-1100. Painter and Chalk subsequently posted an inadequate supersedeas bond that resulted in further briefing and a hearing. The Circuit Court agreed with Regions that the bond was inadequate, and Painter and Chalk subsequently posted the bond ordered by the Circuit Court. Painter and Chalk appealed to this Court from the Circuit Court's judgment confirming the arbitration award.

5. As a result of the lengthy confirmation proceedings before the Circuit Court and Painter's and Chalk's appeal to this Court, Regions has reasonably incurred \$114,887.81 in additional attorneys' fees and costs after the arbitrator's award. *See* Affidavit of David Kaufman and supporting exhibit, attached as Exhibit A.¹ The attorneys' fees provision contained in Painter's and Chalk's employment agreements with Regions entitles Regions to recover these additional attorneys' fees and costs incurred through this appeal, stating:

14. Attorneys' Fees. The prevailing party in any proceeding brought to enforce the terms of this Agreement shall be entitled to an award of reasonable attorneys'

¹ Exhibit A to David Kaufman's affidavit is an itemization of the attorneys' fees and costs that Regions has incurred in connection with the appeals of the arbitration award. This itemization contains a detailed description of the work performed by Regions' attorneys and reflects their mental impressions and strategies. Regions has sued Alliant Insurance Services, Inc., Painter's and Chalk's current employer, in the United States District Court for the Southern District of Mississippi for damages resulting from Alliant's misconduct in hiring Painter and Chalk and stealing Regions' clients (Civil Action No. 3:13-cv-667 HTW-L.RA). Alliant is represented by the same Hand Arendall attorneys who represent Painter and Chalk in this case (Doug McCoy and Katie Hassell). Because the federal court case is currently pending, opposing counsel in this matter should not have access to the protected work product contained in the itemization. Accordingly, Regions is filing the itemization under seal pursuant to MISS. R. APP. P. 48A(c) for in camera review as the Court deems appropriate pursuant to MISS. R. APP. P. 48A(e).

fees and costs incurred in investigating and pursuing such action, *both at the trial and appellate levels*.

R.E. 31-46; C.P. 1:44-59 (emphasis added).

6. This Court has held that it “may grant a motion for attorney fees where a contract provides for reasonable attorney fees and the trial court granted fees for services in the trial court.” *In re Estate of McLemore*, 63 So. 3d 468, 496 (Miss. 2011). Indeed, this Court has granted fees incurred by a party during the appeal process on many occasions. *See, e.g., Dixie Contractors, Inc. v. Ballard*, 249 So. 2d 653, 657 (Miss. 1971) (enforcing the provisions of the surety bond which provided for attorney’s fees and granting attorney’s fees for the appeal in the amount of one-half the fees awarded by the trial court); *Schilling v. Schilling*, 452 So. 2d 834, 836 (Miss. 1984) (awarding appellee for fees incurred during the appeal in the amount of one-half of the fee that was awarded to her by the trial court).

7. Painter’s and Chalk’s employment agreements specifically provide for attorneys’ fees “at the . . . appellate level.” Furthermore, Regions has submitted specific proof of the necessary and reasonable attorneys’ fees and costs it has incurred during this appeal process through Mr. Kaufman’s affidavit and supporting exhibit.² Therefore, the Court should award Regions \$114,887.81 for its appellate attorneys’ fees and costs. Such an award would be consistent with this Court’s precedent because it is well less than one-half of the attorneys’ fees and costs awarded to Regions at the trial level. *See, e.g., Dixie Contractors*, 249 So. 2d at 657; *Schilling*, 452 So. 2d at 836.

ACCORDINGLY, Regions respectfully moves this Court for an award of its attorneys’ fees and costs on appeal in the amount of \$114,887.81. Regions also requests that the Court order that the supporting exhibit to Mr. Kaufman’s affidavit remain under seal and available


² See *supra* note 1.

only for review in camera by the Court. Regions requests such other relief as the Court deems appropriate.

Dated: March 19, 2015.

Respectfully submitted,

REGIONS INSURANCE, INC.

By: 
One of Its Attorneys

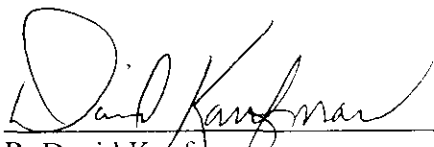
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CERTIFICATE OF SERVICE

I, R. David Kaufman, one of the attorneys for Appellee, do hereby certify that I have this day, served the foregoing document to all counsel of record via U.S. Mail.

Dated: March 19, 2015.


R. David Kaufman

IN THE SUPREME COURT OF MISSISSIPPI

**WILLIAM L. PAINTER
JOHN A. CHALK, JR.**

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VS.

CASE NO: 2014-CA-00883

**REGIONS INSURANCE, INC.
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APPELLEE

AFFIDAVIT OF R. DAVID KAUFMAN

I, R. David Kaufman, swear that the following statements, based on my personal knowledge, are true:

1. I am an adult and am competent to testify to the matters presented in this affidavit.

2. I am an equity member of the law firm of Brunini, Grantham, Grower & Hewes, PLLC ("the Brunini firm"), and I am lead counsel for Regions Insurance, Inc. d/b/a Regions Insurance of Mississippi ("Regions") in connection with Regions' claims against William L. Painter ("Painter"), John A. Chalk, Jr. ("Chalk"), Jamie L. White, Angie M. Strickland (collectively, "the Painter Group") and Alliant Insurance Services, Inc. ("Alliant"). Regions initially engaged the Brunini firm in July 2013 to, among other things, pursue an action against the Painter Group relating to the Painter Group's violations of their employment agreements with Regions and their tortious and otherwise improper conduct in poaching Regions' clients and employees.

3. The Brunini firm's representation of Regions in this matter has generally included: (1) the filing of a state court action in the Circuit Court of Madison County, Mississippi against the Painter Group for injunctive relief and damages; (2) obtaining injunctive relief against the Painter Group; (3) the handling of an unsuccessful mediation with the Painter

Group and their attorneys; (4) the filing of a federal court action in the United States District Court for the Southern District of Mississippi, Jackson Division against Alliant and Jane and John Does for their part in the coordinated and systematic raid on Regions' clients and employees; (5) the preparation of numerous pleadings, motions and responses to pleadings and motions in both actions; (6) the complicated coordination of an enormous electronic document production and review of literally hundreds of thousands of pages of documents in discovery; (7) the preparation for and taking of eleven depositions—four in Costa Mesa, California, one in Birmingham, Alabama, and six in Jackson, Mississippi—many of which taking multiple days to complete; (8) the preparation for and participation in the four-day arbitration of Regions' claims against Painter and Chalk; (9) the preparation of numerous motions and responses to motions in the proceedings to confirm the arbitrator's award and enter judgment on the same in the Circuit Court; (10) the preparation of a motion and rebuttal memorandum regarding Painter's and Chalk's insufficient supersedeas bond in connection with their appeal of the judgment entered by the Circuit Court; and (11) the participation in Painter's and Chalk's appeal to this Court, including the preparation of Regions' Appellee Brief.

4. Pursuant to Paragraph 14 of Painter's and Chalk's employment agreements with Regions, the arbitrator awarded Regions its reasonable fees and expenses incurred through the arbitration of Regions' claims against Painter and Chalk in the amount of \$427,276.40, and the Circuit Court of Madison County, Mississippi confirmed that award.¹

5. Paragraph 14 of Painter's and Chalk's employment agreements with Regions also provides for reasonable attorneys' fees and costs incurred through the appellate process, stating:

14. Attorneys' Fees. The prevailing party in any proceeding brought to enforce the terms of this Agreement shall be entitled to an award of reasonable attorneys'

¹ The arbitrator did not award Regions and Regions did not seek its fees and costs associated with the federal court litigation against Alliant and is not seeking those fees and costs in this appeal.

fees and costs incurred in investigating and pursuing such action, both at the trial and appellate levels.

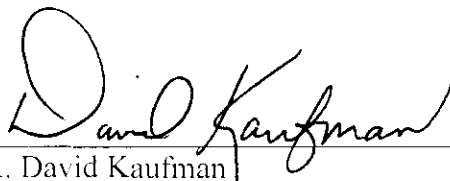
R.E. 31-46; C.P. 1:44-59. Thus, Regions is entitled to its fees and costs incurred after the arbitrator's award.

6. All the legal services performed by the Brunini firm after the issuance of the arbitration award (specifically, items (9) through (11) described in paragraph three above) were necessarily and reasonably incurred to adequately and thoroughly defend Regions' judgment against Painter and Chalk at the appellate level. Indeed, as evidenced by the extensive work described above, the confirmation of the arbitration award and the appeal in this matter have required a significant amount of time on the part of myself, my law partners, and one of our associates, as well as several of our paralegals.

7. A true and correct itemization of the Brunini firm's post-arbitration work is attached as Exhibit A.² Regions has paid the Brunini firm's invoices for this work. The hourly rates reflected on the itemization are the usual and customary hourly rates charged for each timekeeper's services.

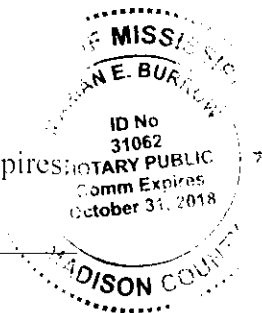
² Exhibit A contains a detailed itemization and description of the work Regions' attorneys performed and their mental impressions and strategies. Regions has sued Alliant, Painter's and Chalk's current employer, in the District Court for the Southern District of Mississippi, Jackson Division, for damages as a result of their conduct in improperly hiring Painter and Chalk and stealing Regions' clients. Alliant is represented by the Hand Arendall attorneys who are also counsel of record in this case (Doug McCoy and Katie Hassell). Because the federal court case is currently pending, opposing counsel in this matter should not have access to the protected work product contained in Exhibit A. Accordingly, Regions will submit Exhibit A under seal pursuant to MISS. R. APP. P. 48A(c) for in camera review as the Court deems appropriate pursuant to MISS. R. APP. P. 48A(e).

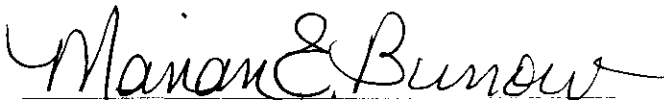
Dated: March 19, 2015.


R. David Kaufman

SWORN TO AND SUBSCRIBED before me, this the 19th day of March, 2015.

My Commission Expires:




NOTARY PUBLIC